

## **APPENDIX C COVENANT NOT TO SUE**

The standard covenant not to sue contains matter in brackets. Upon the Department's issuance of a covenant not to sue, the Department will choose the matter in brackets which is applicable to the specific circumstances of the particular site. The Department may elect to issue a covenant not to sue in one or more parts. The Department may modify this document to address the unique circumstances of a publicly conducted remediation.

### **COVENANT NOT TO SUE**

The Department issues this Covenant Not to Sue (Covenant) pursuant to N.J.S.A. 58:10B-13.1. That statute requires a Covenant with each no further action letter. However, in accordance with N.J.S.A. 58:10B-13.1, nothing in this Covenant shall benefit any person who is liable, pursuant to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, for cleanup and removal costs and the Department makes no representation by the issuance of this Covenant, either express or implied, as to the Spill Act liability of any person.

The Department covenants, except as provided in the preceding paragraph, that it will not bring any civil action against:

- (a) the person who undertook the remediation;
- (b) subsequent owners of the subject property;
- (c) subsequent lessees of the subject property; and
- (d) subsequent operators at the subject property;

for the purposes of requiring remediation to address contamination which existed prior to the date of the [Select one: final certified report (including the report date and title), or affidavit (including the date and the name of the person who signed the affidavit)] for the real property) at [Select one: industrial establishment, site or area(s) of concern] identified above, payment of compensation for damages to, or loss of, natural resources, or payment of cleanup and removal costs for such additional remediation.

[include the following paragraph if either engineering or institutional controls were part of the remedial action at the industrial establishment, site or area(s) of concern:

The person who undertook the remedial action, and each subsequent owner, lessee and operator, during that person's ownership, tenancy or operation, shall maintain all applicable engineering and institutional controls and conduct periodic compliance monitoring in the manner the Department requires.]

[include the following paragraph if a restricted use remedial action was implemented at the industrial establishment, site or area(s) of concern:

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1 E-105, pursuant to N.J.A.C. 7:11-2.6 and N.J.A.C. 7:1J-2.7 respectively for any costs or damages relating to the remediation covered by this Covenant. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.]

[include the following paragraph if a limited restricted use remedial action was implemented the industrial establishment, site or area(s) of concern:

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1 E-105, pursuant to N.J.A.C. 7:11-2.6 and N.J.A.C. 7:1J-2.7 for any costs or damages relating to the remediation covered by this Covenant if the Department requires additional remediation in order to remove the institutional control. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.]

Pursuant to N.J.S.A. 58:10B-13.1d, this Covenant does not relieve any person from the obligation to comply in the future with laws and regulations. The Department reserves its right to take all appropriate enforcement for any failure to do so.

The Department may revoke this Covenant at any time after providing notice upon its determination that:

(a) any person with the legal obligation to comply with any condition in this No Further Action Determination has failed to do so;

(b) [include the following language if engineering or institutional controls were part of the remedial action at the industrial establishment, site or area(s) of concern:

i. any person with the legal obligation to maintain or monitor any engineering or institutional control has failed to do so; or

ii. any person with the legal obligation to submit, on a biennial basis, a certification that the engineering and institutional controls are being properly maintained and continue to be protective of the public health and safety and of the environment has failed to do so.

This Covenant, which the Department has executed in duplicate, shall take effect immediately once the person who undertook the remediation has signed and dated the Covenant on the lines supplied below and the Department has received one copy of this document bearing original signatures of the Department and the person who undertook the remediation.

[insert Name of Person who undertook the remediation]

By: \_\_\_\_\_

Title: \_\_\_\_\_

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

Dated: \_\_\_\_\_

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_